

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

MICHAEL C. TIERNEY,)	NO. 1:11-cv-00246 LEK/RLP
)	
Petitioner,)	
)	ORDER DENYING MOTION FOR
vs.)	RECONSIDERATION
)	
NEIL ABERCROMBIE, et al.,)	
)	
Respondents.)	
_____)	

ORDER DENYING MOTION RECONSIDERATION

On August 5, 2011, Magistrate Judge Richard Puglisi issued a Findings and Recommendation ("F&R") to deny this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. See F&R, ECF No. 33. On September 30, 2011, this court adopted the F&R over Petitioner's objections. Order, ECF No. 42. On April 11, 2012, the Ninth Circuit Court of Appeals vacated and remanded the case for consideration of Petitioner's pending motions for reconsideration. ECF No. 82. On May 9, 2012, this court denied Petitioner's motions for reconsideration. Order, ECF No. 90. Thereafter, this court denied two subsequent motions for reconsideration. Order, ECF No. 98. Judgment entered on May 17, 2012. ECF No. 99.

On May 22, 2012, the court denied Petitioner a certificate of appealability. ECF No. 100. Petitioner promptly filed a fifth motion for reconsideration. ECF No. 101. The court denied that motion on August 29, 2012. ECF No. 133. Throughout these proceedings Petitioner filed numerous other

motions for reconsideration, objections to magistrate orders, and interlocutory appeals. See e.g., ECF Nos. 106, 109, 111, 114, 118, 119, 125, 126, 129, 134, 136, 139, 140. All have been considered and denied.

On December 18, 2012, the Ninth Circuit denied Petitioner's request for a certificate of appealability. ECF No. 144. On January 23, 2013, the Ninth Circuit denied Petitioner's request to transfer his motions for reconsideration in this court to the appellate court and construe them as a second or successive petition. ECF No. 145. On February 27, 2013, the Ninth Circuit denied Petitioner's request to file a second or successive petition. ECF No. 146.

Petitioner now moves for reconsideration based on the Hawaii state courts denial of a state petition for relief on his claims. A successful motion for reconsideration must demonstrate some reason the court should reconsider its prior decision and set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision. *White v. Sabatino*, 424 F. Supp. 2d 1271, 1274 (D. Haw. 2006). Three grounds justify reconsideration: (1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or prevent manifest injustice. *Id.* (citing *Mustafa v. Clark County Sch. Dist.*, 157 F.3d 1169, 1178-79 (9th Cir. 1998)). "[A] motion for reconsideration should not be granted, absent highly unusual circumstances." *Carroll v. Nakatani*, 342

F.3d 934, 945 (9th Cir. 2003) (citation omitted).

Petitioner's state court case does not constitute newly discovered evidence, an intervening change in controlling law, or manifest error. Moreover, in light of the Ninth Circuit's denial of a certificate of appealability or permission to file a second or successive petition, Petitioner's Motion for Reconsideration is DENIED.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, March 21, 2013.



/S/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

Tierney v. Abercrombie, et al., 1:11-cv-00246 LEK/RLP; Order Denying Motion for Reconsideration; G:\docs\prose attys\Recon\DMP\2013\Tierney 11-246 lek (habeas).wpd